

**United States Department of Labor
Employees' Compensation Appeals Board**

E.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Jamaica, NY, Employer**

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**Docket No. 08-347
Issued: October 20, 2008**

Appearances:

*Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 14, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 23, 2007 merit decision, which denied her claims for recurrences of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained recurrences of disability on February 28, May 13 and August 22, 2006 causally related to her accepted employment condition.

FACTUAL HISTORY

On January 22, 2004 appellant, then a 38-year-old clerk, sustained injury to her right shoulder injury while sweeping her work area. The Office accepted appellant's claim for right shoulder superior glenoid labrum lesion and authorized arthroscopic surgery which was performed on July 8, 2004. Appellant stopped work on January 23, 2004.

Appellant submitted reports from Dr. Joseph A. Bosco, a Board-certified orthopedic surgeon, who treated her for right shoulder impingement and tendinitis. On July 8, 2004 Dr. Bosco performed arthroscopic subacromial decompression and bursectomy of the right subacromial space, mini-open rotator cuff repair, arthroscopic synovectomy of the right glenohumeral joint and diagnosed right shoulder rotator cuff tear, synovitis and impingement. In reports dated October 12, 2004 to August 23, 2005, he noted that appellant continued to experience significant pain in her right shoulder postoperatively and was totally disabled for six months. On August 18, 2005 Dr. Bosco performed right shoulder arthroscopy, decompression, bursectomy, synovectomy and biceps tendinosis.¹ In a work capacity evaluation dated October 28, 2005, he returned appellant to limited duty, four hours per day on November 5, 2005 with restrictions.

On December 15, 2005 the employing establishment offered appellant a limited-duty, part-time position, four hours per day as a modified clerk effective December 15, 2005. On December 28, 2005 appellant accepted the job and returned to work on January 21, 2006.

Appellant submitted physical therapy notes from December 2, 2005 to January 23, 2006. In a February 17, 2006 duty status report, Dr. Bosco noted that appellant could return to limited duty January 21, 2006 for four hours per day, with restrictions.

On February 28, 2006 appellant filed a Form CA-2a, notice of recurrence of disability alleging that she experienced worsening right shoulder pain and stiffness causally related to her work injury. She stopped work on February 28, 2006 and returned to a limited-duty position on March 29, 2006. On March 27, 2006 the Office advised appellant of the evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her claimed recurrent disability and the 2004 work injury.

On March 29, 2006 appellant reported experiencing severe right shoulder pain on February 28, 2006 and her supervisor referred her to the employing establishment nurse for treatment. In reports dated March 7 and April 7, 2006, Dr. Bosco noted findings of a painful right shoulder and diagnosed rotator cuff tear. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by employment activity and advised that she was totally disabled from January 27, 2004 to March 24, 2006 and from February 20 to March 24, 2006. In a March 16, 2006 return to work slip, Dr. Bosco noted that appellant was treated on March 14, 2006 and was disabled from February 27 to March 27, 2006. He noted in duty status reports dated March 24 and April 7, 2006, that appellant could return to work limited duty, four hours per day.

On May 4, 2006 the employing establishment offered appellant a limited-duty part-time modified clerk position, four hours per day with restrictions and she accepted the position and started work on May 4, 2006.

On May 25, 2006 appellant filed a CA-2a form, notice of recurrence of disability, alleging that on May 13, 2006 she experienced worsening right shoulder pain and inflammation causally related to her work injury. She stopped work on May 13, 2006. On May 25, 2006

¹ The operative report for this procedure is not in the case record.

appellant stated that she experienced stiffness and pounding in her right shoulder beginning May 13, 2006. She delayed in reporting her condition because she believed it would resolve on its own; however, when her pain persisted she sought medical treatment on May 18, 2006. In a May 19, 2006 return to work slip, Dr. Bosco noted that appellant was totally disabled until June 9, 2006. In an undated attending physician's report, he diagnosed rotator cuff tear and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. Dr. Bosco advised that appellant was totally disabled from February 20 to March 29, 2006 because of pain and stiffness.

In a decision dated June 2, 2006, the Office denied appellant's claim for a recurrence of disability commencing February 28, 2006.

On June 6, 2006 appellant noted returning to limited-duty work on January 21, 2006. On February 28 and May 13, 2006 she experienced a spontaneous increase of pain and stiffness due to her work injury and stopped work. Appellant submitted physical therapy reports from April 12 to May 15, 2006. In a return to work slip dated June 9, 2006, Dr. Bosco noted treating appellant on May 19 and June 9, 2006. He advised that appellant was status post multiple surgeries of the right shoulder with bicep tendinitis and was totally disabled from May 17 to June 30, 2006 and could return to light-duty work on July 1, 2006 with restrictions. On June 9, 2006 Dr. Bosco diagnosed right shoulder rotator cuff tear and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. He advised that appellant was totally disabled from May 17 to June 30, 2006 and could return to light-duty work on July 1, 2006 with restrictions. In subsequent reports, Dr. Bosco reiterated his diagnosis and indicated with a checkmark "yes" that appellant's condition was caused or aggravated by her employment.

In a decision dated July 21, 2006, the Office denied appellant's claim for a recurrence of disability commencing May 13, 2006.

On August 4, 2006 the employing establishment offered appellant a limited-duty part-time modified clerk position, four hours per day with restrictions and she accepted the position on August 11, 2006 and returned to work.

On August 23, 2006 appellant filed a CA-2a form, notice of recurrence of disability, alleging that on August 22, 2006 she had worsening right shoulder pain causally related to her work injury. She noted returning to limited duty on July 1, 2006, which accommodated her restrictions. However, on August 17, 2006 appellant was transferred to a job requiring her to work outside her restrictions which aggravated her injury. She also stated that on February 28, 2006 she was assigned extra tasks at work that aggravated her work injury. Appellant stopped work on August 22, 2006 and returned to limited-duty work on August 23, 2006. Her supervisor noted on the CA-2a form that the August 11, 2006 job offer was within appellant's work restrictions. She noted that, although appellant accepted the position, she never reported for the assignment or performed the modified letter case duties. On August 17, 2006 appellant contacted the union and was returned to the "directory section." In an undated statement, she noted that on August 22, 2006 she was informed by her supervisor that she was to report to the letter case section. Appellant informed her supervisor that she could not perform these duties because they were outside of her restrictions.

In August 22, 2006 reports, Dr. Bosco noted treating appellant for right shoulder tenderness. Appellant reported that her shoulder got worse after the employing establishment placed her at a different job. Dr. Bosco recommended modified duties, two hours per day. He diagnosed rotator cuff tear and bicep tendinitis and noted with a checkmark “yes” that appellant’s condition was caused or aggravated by an employment activity. Dr. Bosco advised that appellant was totally disabled from May 17 to June 30, 2006 and could return to light-duty work on July 1, 2006 with restrictions. On October 6, 2006 he treated appellant for shoulder pain which waxed and waned. Dr. Bosco noted appellant’s disability, continued her modified duties and increased her work hours, from three to four hours per day on October 20, 2006.

The employing establishment submitted a statement from a supervisor dated November 28, 2006, who noted that the August 11, 2006 job offer was within appellant’s restrictions. The supervisor advised that on August 17, 2006 appellant was transferred to the letter case unit and immediately notified her supervisor and the union that the position was outside her restriction and was subsequently transferred back to the directory section where she performed sedentary work.

In a decision dated November 28, 2006, the Office denied appellant’s claim for a recurrence of disability commencing August 22, 2006.

Appellant requested reconsideration. On January 21, 2006 she returned to work in the modified letter case unit and asserted that her increased work duties and climate changes had caused her disability. On March 29, 2006 appellant returned to work and was assigned new tasks requiring her to repetitiously stamp mail, cross out addresses and correct addresses which caused right shoulder pain. On March 7, 2006 Dr. Bosco noted that appellant was progressing well at work for one week and then had right shoulder pain that she attributed to the cold weather. He noted shoulder tenderness and took her off work for one week. In reports dated November 17, 2006 to August 14, 2007, Dr. Bosco noted appellant’s complaints of intermittent right shoulder and lateral elbow pain. He recommended continued limited-duty work, four hours per day. Attending physician’s reports dated December 19, 2006 to July 6, 2007 diagnosed right rotator cuff tear and noted with a checkmark “yes” that appellant’s condition was work related.

In a decision dated August 23, 2007, the Office denied modification of the June 2, July 21 and November 28, 2006 decisions denying appellant’s claims for recurrences of disability on February 28, May 13 and August 22, 2006.

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must

show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.²

Causal relationship is a medical issue³ and the medical evidence required to establish acausal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

ANALYSIS

The Office accepted appellant's claim for right shoulder superior glenoid labrum lesion and authorized arthroscopic surgery which was performed on July 8, 2004. Appellant returned to a light-duty position, four hours per day, on January 21, 2006. Thereafter, she filed recurrence of disability claims on February 28, May 13 and August 22, 2006. However, appellant has not submitted sufficient evidence to support a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.

Regarding the February 28, 2006 recurrence of disability, appellant submitted March 7 and April 7, 2006 attending physician's reports from Dr. Bosco, who noted a painful right shoulder and diagnosed rotator cuff tear. Dr. Bosco noted with a checkmark "yes" that appellant's condition was work related and advised that she was totally disabled from February 20 to March 24, 2006 because of pain and stiffness. However, he did not provide any medical rationale addressing why appellant's disability on or after February 28, 2006 causally related to her accepted conditions.⁵ Dr. Bosco also failed to note a specific date of recurrence of disability or any changes in the nature of appellant's physical condition, arising from the employment injury that prevented her from performing her light-duty job. On March 7, 2006 he noted that appellant was progressing well at work after a week when she had right shoulder pain that she related to the cold weather. However, Dr. Bosco did not specifically relate appellant's disability for her light-duty job to her accepted conditions. In return to work slips dated March 16 and April 7, 2006, he noted appellant's disability but did not specifically relate such disability to the accepted conditions. Duty status reports dated March 24 and April 7, 2006, noted that only appellant could return to work limited duty, four hours per day. Dr. Bosco did not address whether any claimed disability was causally related to her accepted conditions.

² *Terry R. Hedman*, 38 ECAB 222 (1986). See 20 C.F.R. § 10.5(x) for the definition of a recurrence of disability.

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value. *Alberta S. Williamson*, 47 ECAB 569 (1996).

For the May 13, 2006 recurrence of disability, appellant submitted additional return to work slips from Dr. Bosco dated May 24 and June 9, 2006, who advised that she could return to light-duty work on July 1, 2006. Dr. Bosco indicated that appellant was status post multiple surgeries of the right shoulder with bicipital tendinitis and was totally disabled from May 17 to June 30, 2006. Duty status reports dated June 9 and July 11, 2006, advised that appellant could return to work July 1, 2006 subject to restrictions. None of the reports address how appellant's disability was causally related to her accepted conditions. Attending physician's reports from Dr. Bosco dated June 9 and July 11, 2006, diagnosed right shoulder rotator cuff tear, noted total disability and checked a box "yes" on the form report in support of causal relationship, but he did not provide medical rationale to support his opinion on causal relationship.⁶ Dr. Bosco also failed to note a specific date of a recurrence of disability nor did he note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing her light-duty position.

As to the August 22, 2006 recurrence of disability, appellant submitted an August 22, 2006 report from Dr. Bosco who noted right shoulder tenderness. Dr. Bosco recommended modified duties, two hours per day, but did not provide any opinion explaining the reasons that appellant's recurrent condition and disability was due to the accepted work injury.⁷ In an attending physician's report dated August 22, 2006, he did not address disability on or after August 22, 2006. In an August 22, 2006 duty status report, Dr. Bosco noted findings and advised that appellant could return to work two hours per day subject to restrictions. Again, he did not address whether appellant's increased disability on or after August 22, 2006 was causally related to her accepted conditions. Dr. Bosco also did not note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented her from performing her light-duty position.

Other medical evidence does not specifically address how appellant sustained a change in the nature and extent of her injury-related condition such that she could not perform her light-duty job on or after February 28, May 13 or August 22, 2006.

The Board also finds that the evidence does not substantiate that appellant had a change in the nature and extent of her light-duty requirements or was required to perform duties which exceeded her medical restrictions. Dr. Bosco's August 22, 2006 report noted that appellant's shoulder got worse after the employing establishment placed her at a different job. In this report, he appears merely to be repeating appellant's assertions regarding her work duties. There is no evidence establishing that any particular duties she performed were beyond her work restrictions. Appellant noted returning to modified work on January 21, 2006 and asserted that her shift report time and the climate changes caused her recurrences of disability. She noted that on March 29, 2006 new tasks, including repetitiously stamping mail, crossing out addresses and correcting addresses, caused right shoulder pain. Appellant further asserted that on August 17, 2006 she was forced to work in a site which did not accommodate her restrictions which caused an aggravation of her injury. There is no evidence establishing that any particular duty that

⁶ *Id.*

⁷ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

appellant actually performed exceeded her work restrictions. Instead, appellant's supervisor, on August 23, 2006, advised that her position was within her work restrictions. She further explained that appellant never reported to or performed the duties of the modified letter case assignment. Another supervisor noted on November 28, 2006 that the August 11, 2006 job offer was within appellant's restrictions. He advised that on August 17, 2006 appellant was transferred to the letter case unit and immediately notified her supervisor and the union that the position was outside her restrictions and was subsequently transferred back to sedentary work. The record does not substantiate a change in the nature and extent of appellant's light-duty requirements or that she was required to perform duties which exceeded her medical restrictions.

Appellant has not met her burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit her from performing the light-duty position she assumed after she returned to work.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained recurrences of disability on February 28, May 13 or August 22, 2006.

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2007 decision of the Office of Worker' Compensation Programs is affirmed.

Issued: October 20, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board